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No. 89-686

In The

Supreme Court of the United States

October Term, 1989

RICHARD NEVINS, CONWAY COLLIS, ERNEST DRONENBURG, WILLIAM BENNETT, CALIFORNIA STATE BOARD OF EQUALIZATION AND STATE OF CALIFORNIA,

Petitioners,

vs.

HOOPA VALLEY TRIBE AND HOOPA TIMBER CORPORATION,

Respondents.

PETITIONERS' REPLY MEMORANDUM

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This is not a garden variety preemption case. On the contrary, this case gives this Court its first opportunity to review a tax on non-Indian purchasers of Indian goods in the context of undisputed proof that the revenues from the tax are used to fund services which directly benefit the tribe in question. Thus, this case presents an important question of federal law within the meaning of Rule 17.1(c).

As we stated in our petition (pp. 6-7), the Ninth Circuit misapplied this Court's decision in *Cotton Petroleum Corp. v. New Mexico*, ___ U.S. ___, 109 S.Ct. 1698

(1989). *Cotton Petroleum* mandates a flexible preemption approach which places a greater emphasis on the states' revenue needs than do the earlier cases on which the Ninth Circuit relied, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) and *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832 (1982). The fact that, as of this writing, *Cotton Petroleum* is less than a year old is irrelevant to the suitability of this case as a vehicle to provide what then-Justice Rehnquist described as a need for predictability in this area of the law. *Ramah, id.*, dissenting, at 847.

The Tribe also misstates the issue in this case. This is evident from the following:

THE ISSUE (Petition, p.i)	THE TRIBE'S REVISION (Brief in Opp., p.7)
Whether California may impose timber tax on a non-Indian purchaser of timber harvested on an Indian reservation *if the revenues from the tax are used to fund general government services* to the Indian tribe even though the revenues do not directly fund the production of the timber? (Emphasis added.)	Accordingly, petitioner here seeks to abandon the Court's balancing of interests in favor of a broad rule permitting state taxation of revenues generated on Indian reservations *if individuals received state services.* (Emphasis added.)

Lastly, the Tribe suggests that the judgment in its favor can be sustained "on several other grounds." (Brief in Opp., p. 10) But none of these grounds were even briefed by the parties in the proceedings below, let alone

ruled upon, and they also assume incorrectly that the California tax is imposed on the Tribe. In fact the tax falls upon the non-Indian purchasers. (Pet. App., p. A-6)

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